

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

JAN - 9 2020 ★

HP INC., a Delaware corporation; and
HEWLETT-PACKARD DEVELOPMENT
COMPANY, L.P., a Texas limited
partnership,

Plaintiffs,

v.

ZTHY TECH INC., a California corporation;
batterymon16, an entity of unknown form;
ehome007, an entity of unknown form;
elecbrain15, an entity of unknown form;
Idallian, an entity of unknown form; irelia_jt,
an entity of unknown form; lol-electronic, an
entity of unknown form; shop-siker, an entity
of unknown form; shunwei2014, an entity of
unknown form; sunflower-electronic, an
entity of unknown form; suntek-wireless, an
entity of unknown form; yolanda_dh1, an
entity of unknown form; and DOES 1
through 20,

Defendants.

Case No. 19-210 BROOKLYN OFFICE

FILED UNDER SEAL

PLAINTIFFS' EX PARTE APPLICATION
FOR ORDER TEMPORARILY SEALING:

- 1) THIS EX PARTE APPLICATION
FOR SEALING ORDER
- 2) PLAINTIFFS' COMPLAINT
- 3) EX PARTE APPLICATION FOR
SERVICE BY EMAIL AND
TEMPORARY RESTRAINING
ORDER FREEZING ASSETS
- 4) DECLARATION OF ERICA
BRAND PORTNOY IN SUPPORT
OF APPLICATION
- 5) DECLARATION OF ROBERT
MUSICK IN SUPPORT OF
APPLICATION
- 6) DECLARATION OF RICHARD
STINGEL IN SUPPORT OF
APPLICATION

Plaintiffs HP Inc. ("HP") and Hewlett-Packard Development Company, L.P. ("HPDC" and collectively, "Plaintiffs") hereby apply to this Court *ex parte* for an order temporarily sealing: (1) this *ex parte* application; (2) Plaintiffs' Complaint; (3) Plaintiffs' Ex Parte Application for Entry of An Order Allowing Service By Email And A Temporary Restraining Order Freezing Certain Financial Accounts, and declarations in support of that Application, submitted by (A) Erica Brand Portnoy, (B) Robert Musick, and (C) Richard Stingel, and; (4) the Court file.

1. Plaintiffs' complaint asserts claims against Defendants for: (1) federal trademark counterfeiting and infringement under 15 U.S.C. § 1114; (2) federal trademark dilution under 15

U.S.C. § 1115; (3) federal unfair competition under 15 U.S.C. § 1125; and (4) unfair competition under New York common law, and violations of New York General Business Law. Plaintiffs have also filed an *ex parte* application for entry of a temporary restraining order, an asset restraining order, and order authorizing service of process by e-mail, and order to show cause why a preliminary injunction should not issue.

2. The Lanham Act states that: “In the case of a civil action arising under section 1114(1)(a) . . . with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the court may, upon *ex parte* application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation.” 15 U.S.C. § 1116(d)(1)(A). Further, “[a]n order under this subsection, together with the supporting documents, shall be sealed until the person against whom the order is directed has an opportunity to contest such order, except that any person against whom such order is issued shall have access to such order and supporting documents after the seizure has been carried out.” 15 U.S.C. § 1116(d)(8).

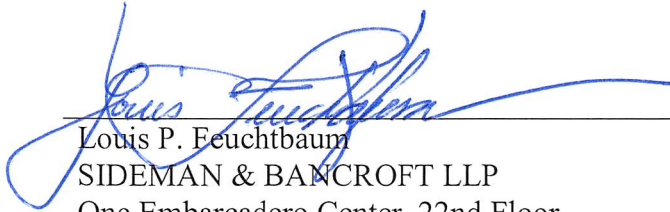
3. Sealing of the file is necessary to prevent Defendants from learning of these proceedings prior to execution and service of the Requested Order. If Defendants were to learn of these proceedings prematurely, the likely result would be the destruction of relevant documentary evidence and the hiding of assets, which would frustrate the purposes underlying the Trademark Counterfeiting Act and would interfere with this Court's power to grant relief. If the Court grants the requested *ex parte* relief, Plaintiff further requests that the Court file be

sealed until the date for hearing on the order to show cause to modify preliminary injunction, as mandated by the statutory scheme under 15 U.S.C. § 1116(d)(8).

A Proposed Order To Seal File is submitted herewith.

Dated: January 6, 2020

RESPECTFULLY SUBMITTED,



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